



## Schauman de Scaiola, Martha Susana v. Provincia de Santa Cruz et al.

S. 360. XXV.

**Country:** Argentina

**Region:** Americas

**Year:** 1999

**Court:** Supreme Court of Justice [Corte Suprema de Justicia de la Nación Argentina]

**Health Topics:** Disabilities, Health care and health services, Hospitals, Medical malpractice

**Human Rights:** Right to bodily integrity, Right to health, Right to life

### Facts

Martha Susana Schauman de Scaiola filed a suit against Dr. Juan Manuel Padr n and the Regional Hospital of R o Gallegos of the Government of the Province of Santa Cruz to hold them responsible for her son's death, due to medical malpractice. She claimed liquidated damages due to her suffering caused from the death of her son.

On January 16, 1991, the plaintiff's son suffered a serious fall while practicing mountaineering. He suffered loss of consciousness, a blow to the abdomen, chin injuries, and tooth loss. His companions supplied him with painkillers and stayed with him for the rest of the day.  On the 19th of January, he arrived in Calafate, where the doctors took x-rays and analyzed him, stating that he was generally well, but remained in observation until the 21st of January, when he was discharged with the condition that he went to Rio Gallegos for additional medical tests. He arrived in R o Gallegos on the 23th of January where he was immediately hospitalized in the Regional Hospital. The following day he was attended to by Dr. Padr n (one of the respondents), who prescribed him rest, antibiotics and the application of serum. On the 26th of January, the plaintiff's son asked for more attention since his symptoms were worsening and he had only been attended to a few times. His condition worsened and so he consulted another doctor, Dr. Lambertini, in the same Hospital who admitted that his condition had worsened and that he should have surgery, however,  Dr. Lambertini did not have the authority to make such a decision. Dr. Padr n, the respondent, was able to authorize surgery, but he did not.  The patient's relatives requested his transfer to another hospital in Mendoza because they were concerned with the lack and attention and treatment he was receiving at the Regional Hospital of R o Gallegos. The patient was discharged and ordered to be transferred to the hospital in Mendoza. However, during the transport, health providers noticed that the patient needed urgent attention and surgery. The patient was transferred again to the  Regional Hospital of R o Gallegos and other physicians, not including Dr. Padr n, performed surgery. The patient died the day after the surgery.

The mother of the patient claimed liquidated damages and non-pecuniary compensation.

### Decision and Reasoning

The Supreme Court held that a medical examination should take place to determine whether negligence occurred.  After the medical examination, the Court concluded that the behavior of Dr. Padr n was the real cause of the death of the victim. The patient's condition worsened because of the lack of measures and action of  Dr. Padr n. A physician has the obligation to provide adequate medical services and is responsible for the damages caused by his/her non-performance or irregular execution. This was proven in the case of Dr. Padr n.

It was determined that both Dr. Padr n and the state were negligent in the treatment of the patient whereas the state is responsible for the acts and omissions of the doctor in a state hospital.

The Court found the respondents guilty and condemned them to pay compensation to the plaintiff. The Court held that there was no proof the plaintiff's son had been helping his mother with economic assistance. Therefore, the liquidated damages were dismissed. However, the Court allowed for non-pecuniary damage.

### Decision Excerpts

